IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1178 OF 2003

Arun C. Vora and another ... Petitioners

versus

The State of Maharashtra

and another ... Respondents

...

Mr. Subhash Jha i/by Law Global, for the Petitioners.

Mr. K.V. Saste, A.P.P., for Respondent No.1.

Mr. Shrirang Srimant, for Respondent No. 2.

...

CORAM : A.M.KHANWILKAR,J.

13th January 2005

P.C.:

. Heard Counsel for the parties. This petition takes exception to the process issued by the Magistrate on the complaint instituted by the Respondent Company against the Petitioners for offence punishable under sections 408 and 420 read with section 34 of the Indian Penal Code.

2. The first ground pressed into service on behalf of the Petitioners is that the Petitioners admittedly retired from service about 3 years back, whereas the complaint as filed alleging certain properties of the Company being stolen by the Petitioners and deceitly used to cause loss to the Company was filed after lapse of three years. According to the Petitioners, the allegations in the complaint are, therefore, absurd, especially when there is material on record that the Company has issued certificate to the Petitioners for having rendered efficient and sincere service to the Company. There is no substance in this grievance. The complaint, if read as a whole, clearly spells out the manner in which the Petitioners have allegedly misutilised their position while in service. It also proceeds to explain the circumstances in which the Company became aware about the offence committed by the Petitioners for the first time in January 2003 and immediately thereafter, the complaint was filed with the local police on 6th January 2003, but as no response was received, the Complainant Company was driven to file the private complaint. This position can be

discerned on plain reading of paras 5 to 9 of the complaint. In other words, mere passage of time cannot absolve the Petitioners of the criminal liability spelt out in the complaint as filed.

3. The next argument of the Petitioners is that the complaint made to the police station mentions theft of drawings by the Petitioners, whereas in the complaint as filed, mention is made about theft of compact discs containing technical information and drawings. This discrepancy, to my mind, is not so serious as to quash the criminal action instituted by the Company. It is only a matter of description of the items stolen and misused by the Petitioners.

4. It was next contended that the Respondent Company has not controverted the assertion made in para 14 of the petition filed before this Court and if it is so, it necessarily follows that the allegations in the complaint are absurd. This submission clearly overlooks the assertion made in the complaint in para 5 that the documents in question were found missing after the Petitioners left the service of the Company. Obviously, the Company had no means to ascertain

that the said documents were taken away by the Petitioners. It is only when the Company was confronted with the situation as stated in para 7 and when the matter was further inquired, it became certain that the drawings were taken away by the Petitioners. This aspect will have to be considered at the trial. In other words, merely because the Respondent Company has not controverted the allegations in para 14 of the petition cannot be the basis to quash the criminal action, for it is not possible to take the view that the allegations in the complaint, if read as a whole, are utterly absurd.

5. On the other hand, on reading the complaint as a whole, in particular paras 10 to 12 of the complaint, to my mind, the allegations made therein clearly indicate the complicity of the Petitioners in respect of the alleged offence for which reason it will be inappropriate to quash the criminal action. To get over this position, it is contended on behalf of the Petitioners that the allegations, even if taken as it is, at best, would indicate that the gravamen of the allegations is one of stealing the compact discs containing the technical

information and drawings of the Complainant Company and that cannot be said to be an offence under section 408 and 420 of the Indian Penal Code, for which the process has been issued. In other words, it is contended that the order issuing process clearly suffers from the vice of non-application of mind. I find no substance in this submission. It is well-settled that all the ingredients of the offence need not be spelt out in the complaint. Even if one or two ingredients are lacking, the complaint cannot be quashed in exercise of inherent powers of the High Court. In any case, assuming that the offence of theft is made out from the complaint as filed and if during the trial, evidence to support that position is led, it is always open to the Court to alter the charge appropriately so as to take the matter to its logical end. It will be inappropriate, therefore, to quash the criminal action. All those aspects can be considered at the trial and cannot be the basis for quashing of the criminal action.

6. The Petitioners lastly relied on the decision of this Court reported in 2003 ALL MR (Cri) 1701 in the case of Abdul Sattar Ahmed

Pagarkar (CAPT.) v. R.H. Mendonca, Commissioner of Police & ors. The fact situation of that case is entirely differently. Indeed, in the present case also, the civil proceedings are pending between the parties. However, it is well-settled that merely because civil action is pending, that will not absolve criminal liability if the offence is made out. In the present case, on reading the complaint as a whole, and in particular paras 10 to 12, the offence as alleged is clearly made out.

7. Hence, not a case for quashing. Dismissed.

8. At this stage, Mr. Jha submits that the Petitioners are residents of Kolkata. In the circumstances, they should be exempted from personal appearance during the trial. If such application is made on behalf of the Petitioners, needless to observe that the concerned Magistrate will consider the same in accordance with law.

9. It is further clarified that the trial Court shall decide the matter on its own merits on the basis of evidence adduced before it

uninfluenced by the observations made in this order.

(A.M.KHANWILKAR,J.)